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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF WASHINGTON
15 AT YAKIMA

16 DEVELOPERS SURETY AND
17 INDEMNITY COMPANY, a California
18 corporation,

19 Plaintiff,

20 v.

21 JT CUSTOM HOMES, LLC,
22 a Washington limited liability company,

23 Defendant.

No. 1:22-cv-03030

24 **DEVELOPERS SURETY AND
25 INDEMNITY COMPANY'S
26 COMPLAINT FOR
DECLARATORY JUDGMENT**

27 COMES NOW Plaintiff Developers Surety and Indemnity Company,
28 which alleges and pleads as follows:

29 **INTRODUCTION**

30 1. This is an action for declaratory relief in which Plaintiff,
31 Developers Surety and Indemnity Company, seeks a declaration that it has no

1 duty to defend or indemnify Defendant, JT Custom Homes, LLC (“JT Custom
2 Homes”) with respect to claims asserted by Todd and Janet Wiebke, which
3 claims are the subject of litigation in the Superior Court for the State of
4 Washington, the County of Kittitas, Case No. 20-2-0017819 (“Underlying
5 Lawsuit”).

6 **PARTIES**

7 2. Developers Surety and Indemnity Company (“Developers”) is a
8 domestic insurer incorporated in California and having its principal place of
9 business in California. At all relevant times, Developers was and is authorized
10 to do business in the State of Washington.

11 3. Upon information and belief, Defendant JT Custom Homes, LLC
12 (“JT Custom Homes”) is a Washington limited liability company, with its
13 principal place of business in Cle Elum, Washington.

14 4. Upon information and belief, JT Custom Homes has two members:
15 Laura Vaughn and Thad Vaughn.

16 5. Upon information and belief, Laura Vaughn and Thad Vaughn are
17 Washington citizens residing in Cle Elum, Washington.

18 **JURISDICTION AND VENUE**

19 6. This Court has jurisdiction by virtue of 28 U.S.C. § 1332, as there
20 is complete diversity of citizenship and the amount in controversy exceeds
21 \$75,000.

22 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §
23 1391, as Defendant is a resident of this judicial district and a substantial part of
24 the events giving rise to this action occurred in this district.

- 1 b. Any loss, cost or expense arising out of the abating,
2 testing for, monitoring, cleaning up, removing,
3 containing, treating, detoxifying, neutralizing,
4 remediating or disposing of, or in any way
5 responding to, or assessing the effects of, “fungi” or
6 bacteria, by any insured or by any other person or
7 entity.

8 This exclusion does not apply to any “fungi” or bacteria that
9 are, are on, or are contained in, a good or product intended
10 for bodily consumption.

11 * * *

12 **ADDITIONAL CONDITIONS ENDORSEMENT**

13 This endorsement modifies insurance provided under the following:

14 **COMMERCIAL GENERAL LIABILITY POLICY**

15 The following conditions precedent to coverage are added to and
16 form part of the policy:

- 17 1. You must be named an additional insured on the commercial
18 general liability policy of each contractor and subcontractor
19 that performs work on your behalf throughout the time of
20 each such contractor’s and subcontractor’s performance, and
21 each such policy must provide defense as well as indemnity
22 to you as an additional insured.
- 23 2. You must obtain a certificate of insurance from each
24 contractor and subcontractor that performs work on your
25 behalf prior to the commencement of each such contractor’s
26 and subcontractor’s work indicating that each such contractor
 and subcontractor has a commercial general liability policy
 in effect.
3. Both the policy within which you are named as an additional
 insured and the certificate of insurance you obtain must have
 each occurrence, general aggregate, and products-completed

operations aggregate limits, including sublimits, in an amount equal to or greater than this policy.

4. You must obtain a hold harmless agreement from each of your contractors and subcontractors, indemnifying you against all loss in any way related to work performed on your behalf by each such contractor and subcontractor.

* * *

B. The Underlying Lawsuit

11. On July 13, 2020, Todd and Janet Wiebke filed the Underlying Lawsuit against JT Custom Homes and other subcontractors in Superior Court for the State of Washington, Kittitas County, Case No. 20-2-0017819. A true and correct copy of the Complaint in the Underlying Lawsuit is attached as Exhibit B, and incorporated by reference.

12. In the Underlying Lawsuit, the Wiebkes allege that they contracted with JT Custom Homes to build their home, which is located at 1481 Morgan Creek Road, in Ronald, Washington. The Wiebkes' home allegedly suffered some degree of water damage due to an insufficiently tightened pipe fitting. Between water damage and concurrent mold growth, the Wiebkes allege they have suffered approximately \$542,992.94 in damages. The Wiebkes allege that JT Custom Homes breached the parties' agreement by failing to perform work in a workmanlike manner, and that JT Custom Homes failed to adequately train and supervise subcontractors. The Wiebkes further allege that JT Custom Homes has breached its warranties, and is vicariously liable for any damage caused by subcontractors it hired.

13. JT Custom Homes tendered the Underlying Lawsuit to Developers for defense and indemnity. Claims Resource Management, Inc. ("CRMI"), and

1 Developers agreed to defend JT Custom Homes, subject to a comprehensive
2 reservation of rights.

3 14. During its continued investigation, Developers learned that JT
4 Custom Homes did not satisfy the conditions listed in the Policy's "Additional
5 Conditions" Endorsement, listed in Paragraph 10, above.

6 15. Additional Conditions Endorsements are a condition precedent to
7 coverage.

8 16. Because JT Custom Homes did not satisfy its Policy's Additional
9 Conditions Endorsement, coverage under the Policy is not triggered. Developers
10 no longer owe a duty to defend JT Custom Homes in the Underlying Lawsuit.
11 Developers do not owe a duty to indemnify JT Custom Homes for any amount
12 for which it is found liable in the Underlying Lawsuit.

13 17. During its continued investigation, Developers learned that some of
14 the damages the Wiebkes seek stem from the growth of mold, fungi, and/or
15 bacteria.

16 18. Damages and costs stemming from mold, fungi, and bacteria
17 growth are excluded under the Policy's "Fungi or Bacteria" Exclusion, listed in
18 Paragraph 10, above.

19 19. There are other policy provisions that may apply. Developers
20 reserves the right to assert additional bases for declaratory judgment under the
21 attached Developers Policy.

22 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

23 20. Developers re-alleges each of the allegations of Paragraphs 1
24 through 19 above as fully set forth in this cause of action.

25 21. Per the Policy, Developers is not obligated to defend or indemnify
26 JT Custom Homes, because JT Custom Homes did not satisfy the conditions of

1 the “Additional Conditions” Endorsement, and because coverage is excluded
2 under the “Fungi and Bacteria” Exclusion.

3 22. An actual dispute has arisen between Developers and JT Custom
4 Homes regarding whether the Policy provides coverage to JT Custom Homes for
5 the Underlying Lawsuit.

6 23. Developers seeks a declaration that coverage is not triggered, or is
7 otherwise excluded under the Policy, and that Developers owes no duty to
8 defend or indemnify JT Custom Homes against the claims brought by Mr. and
9 Mrs. Wiebke in the Underlying Lawsuit.

10 24. A judicial declaration is necessary and appropriate at this time, and
11 under the circumstances alleged above, so that Developers can ascertain its
12 duties under the Policy. A judicial declaration will prevent future litigation that
13 would otherwise result from the controversy between Developers and JT
14 Custom Homes.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Developers Surety and Indemnity Company respectfully
17 requests that this Court adjudicate and declare the rights of the parties, and that
18 the Court:

19 (a) Find that Developers has no duty to defend or indemnify JT
20 Custom Homes in relation to the Underlying Lawsuit;

21 (b) For costs of suit incurred herein; and

22 (c) Such other relief as the Court may deem just and proper.

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24 //

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26 //

1 DATED this 7th day of March, 2022

2 COZEN O'CONNOR

3
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21 *Attorneys for Plaintiff Developers Surety and*
22 *Indemnity Company*
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25
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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 7th day of March, 2022

COZEN O'CONNOR

By: /s/ Bonnie L. Buckner

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